STATE OF MICHIGAN

COURT OF APPEALS

DELTA AIRLINES, INC., Plaintiff-Appellee,	UNPUBLISHED January 15, 2004
v	No. 224410 Wayne Circuit Court
SPIRIT AIRLINES, INC., Defendant-Appellant.	LC No. 98-831174-CZ ON REMAND

Before: Neff, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

This action for recovery of mistakenly paid property taxes comes before this Court on remand from our Supreme Court for plenary consideration. Because we conclude that defendant is entitled to summary disposition, we reverse.

I. Facts and Proceedings

In 1982, plaintiff Delta Airlines leased an aircraft hangar and adjacent property known as the "fuel farm" from Wayne County at Detroit Metropolitan Wayne County Airport in Romulus. By virtue of the lease agreement, plaintiff became obligated to pay all applicable taxes on the leased property. Although plaintiff terminated the lease in 1994, the city of Romulus continued to bill plaintiff for assessed property taxes in 1995 and 1996. Plaintiff paid the taxes despite the fact that it no longer leased the property. In fact, defendant Spirit Airlines began leasing a portion of the property, the hangar, in 1994 and continued to lease it in 1995 and 1996. Defendant's lease with Wayne County provided that defendant was "responsible for . . . all municipal, county or state taxes lawfully assessed during the term of [the lease] [a]greement . . . ."

After plaintiff realized that it paid taxes on property it no longer leased, it sued the city of Romulus in the Tax Tribunal for a refund, pursuant to MCL 211.53a. Contemporaneously, plaintiff sued defendant to recover the taxes it paid. In its complaint, plaintiff asserted claims of breach of implied contract and unjust enrichment and a cause of action based on MCL 211.381.[1]

[1] Plaintiff concedes on appeal that unjust enrichment and breach of implied contract are not (continued…)

Plaintiff eventually moved for summary disposition pursuant to MCR 2.116(C)(10), and defendant opposed plaintiff's motion. Defendant also requested summary disposition in its favor pursuant to MCR 2.116(I)(2), specifically contending that MCL 211.381 does not apply, that the common law does not provide plaintiff a right of recovery against defendant, and that plaintiff's claims against defendant are barred by laches. The trial court, however, granted summary disposition to plaintiff and entered a judgment in plaintiff's favor for the amount of taxes paid plus interest pursuant to MCL 211.381 and MCL 600.6013.[2]

In the meantime, proceedings continued in plaintiff's suit against Romulus. The parties to that action agreed that plaintiff did not owe the taxes it paid. In July 1999, plaintiff and Romulus entered into a partial consent agreement, applicable only to the "fuel farm," in which they stated that "[t]he subject property was assessed as of the relevant tax dates as a result of a mutual mistake of fact and, therefore, the assessed, state equalized and taxable values for 1995 and 1996 should be 0." The Tax Tribunal, however, refused to enter a consent judgment reflecting the provisions of the agreement.

Plaintiff appealed the Tax Tribunal's decision to this Court, and defendant appealed the trial court's decision in the instant matter. Although we did not consolidate these cases, we decided both cases on the same day. In plaintiff's suit against Romulus, we reversed the Tax Tribunal's decision.[3] In the instant matter, we decided that our decision in plaintiff's suit against Romulus rendered plaintiff's claims against defendant moot.[4] We therefore vacated the judgment entered by the trial court. After we denied plaintiff's subsequent motion for reconsideration in this matter, plaintiff sought leave to appeal in the Supreme Court.

The Supreme Court initially held this matter in abeyance pending completion of the proceedings in the Tax Tribunal. In March 2003, the Tax Tribunal rendered an order resolving plaintiff's claims against Romulus in which it granted plaintiff's motion for entry of judgment and ordered that "the assessed and taxable values for Parcel No. 80-189-99-0011-000 [the hangar] for the 1995 and 1996 tax years shall be revised to $0." After receiving the Tax Tribunal's decision, the Supreme Court remanded this case to us for plenary consideration in lieu of granting plaintiff leave to appeal.

II. Standards of Review

We review the trial court's decision regarding a motion for summary disposition de novo. *First Public Corp v Parfet*, 468 Mich 101, 104; 658 NW2d 477 (2003). Likewise, we review de

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(…continued)

separate legal claims.

[2] The trial court's order does not specify which of plaintiff's claims formed the basis of the relief it granted. However, because it ordered defendant to pay interest pursuant to MCL 211.381, the trial court apparently at least concluded that plaintiff merited relief under MCL 211.381.

[3] *Delta Airlines, Inc v Romulus*, unpublished opinion per curiam of the Court of Appeals, issued August 2, 2002 (Docket No. 225881).

[4] *Delta Airlines, Inc v Spirit Airlines, Inc*, unpublished memorandum opinion of the Court of Appeals, issued August 2, 2002 (Docket No. 224410).

novo questions of statutory interpretation. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

> When construing a statute, our primary goal is 'to ascertain and give effect to the intent of the Legislature.' *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002); *People v Wager*, 460 Mich 118, 123 n 7, 594 NW2d 487 (1999). To do so, we begin by examining the language of the statute. *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001). If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and the statute is enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). Stated differently, 'a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.' *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). 'Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.' *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). [*People v Phillips*, 469 Mich 390, 395; 666 NW2d 657 (2003).]

III. Analysis

Defendant first asserts that the trial court erroneously granted plaintiff relief pursuant to MCL 211.381. We agree.

MCL 211.381 provides:

> Any person, partnership or corporation, who, in good faith, shall pay the taxes and/or special assessments on real property erroneously assessed, shall have a right of action in assumpsit against the owner or owners of such property for the taxes and/or special assessments thereon so paid, and shall be entitled to interest from the date of such payment, at the rate of 5 per centum per annum.

Defendant correctly argues that plaintiff cannot maintain an action against defendant based on this statute because defendant does not own the property. Although plaintiff contends that we should read this statute *in pari materia* with MCL 211.181(1)[5] and treat defendant as the owner of the property, we apply the *in pari materia* rule only if the statute we are construing is

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[5] MCL 211.181(1) provides:

> Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

ambiguous. *People v Threatt*, 254 Mich App 504, 506; 657 NW2d 819 (2002). MCL 211.381, however, unambiguously describes a cause of action against only the owner of the subject property. Accordingly, summary disposition in defendant's favor pursuant to MCR 2.116(I)(2) is appropriate.

Next, defendant argues that plaintiff's unjust enrichment claim fails.[6] We agree. Plaintiff requests that we imply a contract in law to prevent defendant from being unjustly enriched.

> When a party is unjustly enriched, the law generally requires the benefited party to provide restitution for the benefit received. Courts often employ the legal fiction of a contract implied in law or *quasi* contract to justify payment where no contract exists. *Detroit v Highland Park*, 326 Mich 78, 100; 39 NW2d 325 (1949). To recover under this theory the plaintiff must show that the defendant received a benefit from the plaintiff and that it would be unjust for the defendant to retain that benefit. *Buell v Orion State Bank*, 327 Mich 43, 56; 41 NW2d 472 (1950). We must be cautious in applying this doctrine, however, because the mere fact that a benefit has been conveyed does not necessarily indicate that it is unjust for the party to retain that benefit. [*Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 198; 504 NW2d 635 (1993).]

Defendant originally argued that restitution is not required because the common law does not permit a plaintiff to recoup mistakenly paid taxes. We do not address this argument, however, because defendant raises another argument based on events occurring since the trial court's decision that we find dispositive. In its October 4, 2002, motion for entry of judgment in the Tax Tribunal, plaintiff asserted that this Court's first opinion in this matter applied to both parcels and that the assessment on both parcels should be reduced to zero dollars. Thereafter, in its order granting plaintiff's motion, the Tax Tribunal reduced the 1995 and 1996 assessed and taxable values for the hangar to zero dollars and ordered the alteration of the tax rolls to reflect these changes. Plaintiff has not appealed this portion of the Tax Tribunal's ruling.[7]

We disagree with plaintiff's assertion that the Tax Tribunal's decision has no impact on this case. Because the Tax Tribunal concluded, at plaintiff's urging, that the hangar's assessed and taxable values equaled zero dollars in 1995 and 1996,[8] plaintiff paid taxes that defendant did not owe. Consequently, plaintiff's tax payments did not benefit defendant. Because defendant

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[6] The trial court did not specifically address this issue during the hearing on plaintiff's motion for summary disposition.

[7] Plaintiff has appealed the Tax Tribunal's denial of its request for interest on its judgment against Romulus. This Court has not yet decided plaintiff's appeal of this issue.

[8] Because plaintiff successfully and unequivocally maintained this position in the Tax Tribunal, the doctrine of judicial estoppel prevents plaintiff from asserting a contrary position in this matter. *Ford Motor Co v Pub Service Comm*, 221 Mich App 370, 382-383; 562 NW2d 224 (1997); *Paschke v Retool Industries*, 445 Mich 502, 509-510; 519 NW2d 441 (1994).

was not unjustly enriched by plaintiff's payments, summary disposition in defendant's favor is appropriate.[9]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper

[9] Although plaintiff argues that the trial court abused its discretion by setting aside the default entered against defendant, plaintiff failed to preserve this argument by including it in its statement of questions presented. *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).